

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ASHLEIGH ANGELO, *et al.*,

Plaintiffs,

v.

THOMSON INTERNATIONAL INC.,

Defendant.

Case No. 1:21-cv-01609-JLT-CDB

ORDER GRANTING DEFENDANT’S
MOTION TO COMPEL

(Doc. 85)

Currently before the Court is the motion of Defendant Thomson International Inc., filed November 21, 2023, pursuant to Fed. R. Civ. P. 26, 30 and 37(a)(1) & (3), to compel Plaintiff Howard Jackson (“Plaintiff”) to appear for continued deposition. (Doc. 85). The Court has reviewed the motion and supporting declaration and exhibits, as well as Plaintiff’s opposition (Doc. 91) and Defendant’s reply and supporting declaration (Docs. 92, 93).

Background

The 14 Plaintiffs in these seven, consolidated actions assert causes of action against Defendant based on personal injuries they sustained between June and August 2020 that allegedly were caused by the same product – a salmonella-infected onion sourced by Defendant.

On July 11, 2023, Plaintiff appeared for his deposition. At some point, the deposition was adjourned as Plaintiff experienced a medical event. Shortly afterwards, counsel for both parties

1 began communicating with each other regarding a continuation of the deposition. For instance,
2 on July 27, 2023, in response to Defendant's inquiry about rescheduling the deposition, Plaintiff's
3 counsel represented she agreed to "waiving the discovery deadline for his dep[osition] to make
4 sure you guys [Thomson] can get what you need." (Doc. 85-2 Ex. 2 [7/27/2023 email from
5 attorney Schell]). However, during the ensuing months, counsel for Plaintiff repeatedly informed
6 Defendant she had been unable to contact her client.

7 On or about September 6, 2023, counsel for Plaintiff reported to Defendant that Plaintiff
8 had been incarcerated. Plaintiff reportedly was released from custody on or about November 1,
9 2023, into the care of an inpatient addiction treatment provider. (Doc. 91).

10 Defendant argues that Plaintiff should be compelled to appear for continued deposition
11 and asserts that counsel for Plaintiff has not demonstrated good cause for her inability to locate
12 and make Plaintiff available. Plaintiff argues that Defendant has not carried its burden of
13 demonstrating cause for (1) any continued deposition, and (2) any motion to compel. (Doc. 91
14 pp. 3-4). Plaintiff specifically argues that the topics upon which Defendant seeks to continue the
15 deposition are subjects Plaintiff already has sufficiently addressed in response to written
16 discovery, and, thus, that "Defendant has made no showing that the discovery sought is not
17 cumulative and has not already been sufficiently answered." *Id.* p. 4.

18 **Governing Legal Standard**

19 "Rule 26 provides that a party "may obtain discovery regarding any nonprivileged matter
20 that is relevant to any party's claim or defense and proportional to the needs of the case,
21 considering the importance of the issues at stake in the action, the amount in controversy, the
22 parties' relative access to relevant information, the parties' resources, the importance of the
23 discovery in resolving the issues, and whether the burden or expense of the proposed discovery
24 outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). Information need not be admissible in
25 evidence to be discoverable. *Id.* "Evidence is relevant if: (a) it has any tendency to make a fact
26 more or less probable than it would be without the evidence; and (b) the fact is of consequence in
27 determining the action." Fed. R. Evid. 401.

28 Relevancy is broadly defined to encompass any matter that bears on, or that reasonably

1 could lead to other matter that could bear on, any issue that is or may be in the case.

2 *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). Although relevance is broadly
3 defined, it does have “ultimate and necessary boundaries.” *Gonzales v. Google, Inc.*, 234 F.R.D.
4 674, 680 (N.D. Cal. 2006) (quoting *Oppenheimer Fund, Inc.*, 437 U.S. at 351). “The purpose of
5 discovery is to make trial less a game of blind man’s bluff and more a fair contest with the basic
6 issues and facts disclosed to the fullest extent possible, and to narrow and clarify the issues in
7 dispute.” *Jadwin v. Cnty. Of Kern.*, No. 1:07-cv-0026-OWW-TAG, 2008 WL 2025093, *1 (E.D.
8 Cal. May 9, 2008) (quotation and citations omitted).

9 “The party who resists discovery has the burden to show that discovery should not be
10 allowed, and has the burden of clarifying, explaining, and supporting its objection.” *Id.*
11 (quotation and citations omitted).

12 Separately, motions to compel are governed by Federal Rule of Civil Procedure 37, which
13 states, in pertinent part:

14 **(a) Motion for an Order Compelling Disclosure or Discovery**

15 **(1) In General.** On notice to other parties and all affected persons, a party may
16 move for an order compelling disclosure or discovery. The motion must include a
17 certification that the movant has in good faith conferred or attempted to confer
with the person or party failing to make disclosure or discovery in an effort to
obtain it without court action.

18 Fed. R. Civ. P. 37.

19 Rule 37 states that “an evasive or incomplete disclosure, answer, or response must be
20 treated as a failure to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(4).

21 **Analysis**

22 The Court finds that Plaintiff has failed to carry his burden of showing that appearing for
23 continued deposition should not be allowed.

24 To begin with, throughout Plaintiff’s reported period of unavailability, counsel has taken
25 the position that they would not oppose a continued deposition – beginning as early as
26 approximately two weeks after Plaintiff’s adjourned deposition in July and continuing to as
27 recently as November 2, 2023, on which date they conveyed to Defendant, “we will allow you to
28 take [h]is deposition, but we need to find him first.” (See Doc. 85-2 Ex. 2 [11/2/2023 email from

1 attorney Marler]). Plaintiff offers no explanation to the Court why he is now reversing course.

2 Plaintiff's argument in opposition to an order compelling continued deposition – to wit,
3 that his written discovery responses on the topics for which Defendant seeks a continued
4 deposition are sufficient – fails in “clarifying, explaining, and supporting [Plaintiff's] objection.”
5 *Jadwin*, 2008 WL 2025093, at *1. As there does not appear to be any dispute that Plaintiff's
6 deposition was adjourned before the seven-hour period provided for by the Civil Rules, any
7 burden Defendant may have to seek to continue the deposition now is simply the general
8 relevance standard provided for pursuant to Rule 26(b)(1). *See* Fed. R. Civ. P 30(d)(1).
9 Defendant's assertion that it requires additional time to explore causation- and damages-related
10 issues during a deposition meets that standard; Plaintiff's assertion to the contrary is without
11 merit.

12 The Court acknowledges that counsel for Plaintiff has experienced challenges in obtaining
13 Plaintiff's appearance for continued deposition – both during the period of Plaintiff's recent
14 incarceration (from early-September 2023 to November 1, 2023), and thereafter while Plaintiff
15 participates in inpatient substance abuse treatment. However, counsel offers only a conclusory
16 and unsworn representation in an apparent effort to spotlight this challenge: “Since Plaintiff's
17 release on November 1, Plaintiff's counsel has attempted on a near daily basis to make contact
18 with Plaintiff, frequently emailing and calling his counselor, public defender, estranged daughter,
19 and other potential sources of information about Plaintiff's current location and condition.” (Doc.
20 91 p. 2). But there does not appear to be any dispute as to Plaintiff's current location: a cursory
21 review of the state court docket reflects that Plaintiff was released to “a representative of
22 Pioneer,”¹ which appears to be Plaintiff's inpatient substance abuse provider with whom
23 Plaintiff's counsel represents he is contact.

24 Tellingly absent from Plaintiff's opposition is any explanation by his counsel in any
25 amount of detail as to what specifically they have done to arrange for Plaintiff's continued
26 deposition (that they previously agreed to in communications with Counsel for Defendant): for
27

28 ¹ The docket for Plaintiff's state court criminal action is available at: <https://cp.spokanecounty.org/courtdocumentviewer/publicviewer/DCHearingsByCaseNumber.aspx> (last visited Dec. 14, 2023).

1 instance, have they requested from Plaintiff's counselor whether it is possible to coordinate a
2 deposition, and if so, what was the answer? It appears from the state court docket that there are
3 weekly hearings in Plaintiff's drug court proceedings – does Plaintiff appear for those hearings,
4 and if so, has any attempt been made to secure Plaintiff's availability for deposition in connection
5 with those proceedings?

6 Dispositive motions in this action must be filed by February 2, 2024. (Doc. 40).
7 Defendant is entitled to complete its deposition of Plaintiff in advance of that date. Accordingly,
8 the Court will order Plaintiff to appear for and complete his deposition no later than two weeks
9 prior to the deadline for Defendant to file any dispositive motion. Because the state court docket
10 reflects that Plaintiff's trial is set to commence on February 26, 2024, this Order should not
11 adversely impact Plaintiff's state court proceedings.

12 The Court cautions Plaintiff that his failure to make himself available for continued
13 deposition in violation of this Order may be grounds for sanctions, including evidentiary
14 sanctions (*see Lanier v. San Joaquin Valley Officials Ass'n*, No. 1:14-cv-01938-EPG, 2016 WL
15 4764669, at *8 (E.D. Cal. Sept. 12, 2016)), and dismissal of his action. *E.g.*, *Jones v. Frazesn*,
16 No. 2:09-cv-02758 RCT, 2009 WL 3254905, at *3 (E.D. Cal. Oct. 8, 2009) (dismissing action
17 upon plaintiff's failure to appear for continued deposition; *Lugo v. Sham*, No. C00-11-
18 4MMC(JL)(JCS), 2001 WL 348984, at *4 (N.D. Cal. Apr. 5, 2001) (same).

19 **Conclusion and Order**

20 For the foregoing reasons, it is HEREBY ORDERED:

- 21 1. Defendant's motion to compel (Doc. 85) is GRANTED.
22 2. Plaintiff shall appear for and complete his continued deposition no later than January
23 19, 2024.

24 IT IS SO ORDERED.

25 Dated: December 14, 2023

26 
UNITED STATES MAGISTRATE JUDGE